

EXHIBIT 1

INTRODUCTION

In 2004 and 2005 Respondent Robert Good was a councilman for the City of Albany (the “City”). Mr. Good has been a councilman for the City for 11 years and remains on the Council today. As a councilman in 2004 and 2005, Respondent was a public official and therefore prohibited by Government Code section 87100 of the Political Reform Act (the “Act”)¹ from making, participating in making, or attempting to use his official position to influence any governmental decision in which he had a financial interest.

In this matter, Respondent impermissibly made two governmental decisions in which he had a financial interest. Namely, he voted on matters related to improvements to a park that is directly across the street and within 500 feet from his personal residence.

For the purposes of this Stipulation, Respondent’s violations of the act are stated as follows:

- COUNT 1: On November 1, 2004, as a councilman for the City of Albany, Respondent Robert Good made a governmental decision in which he had a financial interest, by voting to approve the Capitol Improvement Plan, in violation of section 87100.
- COUNT 2: On October 17, 2005, as a councilman for the City of Albany, Respondent Robert Good made a governmental decision in which he had a financial interest, by voting to approve conceptual designs for improvements to Memorial Park, in violation of section 87100.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014. All statutory references are to the Government Code unless otherwise indicated. The regulations of the Fair Practices Commission are contained in sections 18109 through 18997 of title 2 of the California Code of Regulations. All regulatory references are to title 2, division 6 of the California Code of Regulations, unless otherwise indicated.

SUMMARY OF THE LAW

The primary purpose for the conflict-of-interest provisions of the Act is to ensure that “public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001, subdivision (b))

In furtherance of this goal, section 87100 prohibits public officials from making, participating in making, or attempting to use their official position to influence a governmental decision in which they know, or have reason to know, that they have a financial interest. Under section 87103, a public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on a recognized economic interest of the official. For purposes of sections 87100 and 87103, there are six analytical steps to consider when determining whether an individual has a conflict of interest in a governmental decision.²

First, the individual must be a public official as defined by the Act. Section 82048 defines “public official” to include a member of a local governmental agency.

Second, the official must make, participate in making, or attempt to use his or her official position to influence a governmental decision. Under regulation 18702.1, subdivision (a), a public official “makes a governmental decision” when, among other things, the official votes on a matter, obligates his or her agency to any course of action, or enters into any contractual agreement on behalf of his or her agency.

Third, the official must have an economic interest that may be financially affected by the governmental decision. Under section 87103, subdivision (b), a public official has a financial interest in any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

Fourth, it must be determined whether the official’s economic interest in real property is directly or indirectly involved in the governmental decision. Under regulation 18704.2, subdivision (a) (1), the public official’s real property is directly involved in a governmental decision if the real property is located within 500 feet of the boundaries (or the proposed boundaries) of the property which is the subject of the governmental decision. Under regulation 18704.2, subdivision (b), if the real property is “directly involved” in a governmental decision, the materiality standards in regulation 18705.2, subdivision (a) apply.

Fifth, it must be determined if the effect of the decision on the economic interest will be material. Under regulation 18705.2, subdivision (a), if the real property is directly involved in the governmental decision, the financial effect of the decision is presumed to be material.

² As set forth in regulations 18700 through 18708, the Commission has established an eight-step analysis for determining whether a public official has a conflict of interest in a governmental decision. The last two steps of the analysis are exceptions that allow a public official to participate in governmental decisions even though the official may have a conflict of interest. The two exceptions are not relevant to this matter.

Sixth, it must have been reasonably foreseeable, at the time the governmental decision was made, that the decision would have a material financial effect on the economic interest of the official. Under regulation 18706, subdivision (a), a material financial effect on an economic interest is reasonably foreseeable if it is substantially likely that one or more of the materiality standards applicable to the economic interest will be met as a result of the governmental decisions.

An effect of a decision on real property is considered “reasonably foreseeable” if there is a substantial likelihood that it will affect property values, either positively or negatively, or will alter or change the use of the property in some manner. Certainty of the effect is not required. However, if an effect is only a mere possibility, it is not reasonably foreseeable. (*In re Thorner* (1975) 1 FPPC Ops. 198.)³

SUMMARY OF THE FACTS

Respondent Robert Good has been a councilman for the City of Albany for eleven years. He has no other experience in public office. Mr. Good is a Professor of Physics at California State University, East Bay (formerly CSU Hayward). Mr. Good and his wife own their personal residence in Albany, California. They have owned the property since 1968. The Good property is located directly across the street from Memorial Park.

On October 18, 2004, the Albany City Council (the “Council”) unanimously approved the Parks, Recreation and Open Space Master Plan (the “Master Plan”). The Master Plan is a general strategy for improving Albany’s Park and Recreation system over the next five to ten years. As a councilman, Respondent voted in favor of the Master Plan.

The Council unanimously approved the Capital Improvement Plan (“CIP”) on November 1, 2004. The CIP identifies particular improvements to parks and recreation facilities that were recommended in the Master Plan. At the November 1, 2004 Council meeting, the Community Development Director discussed some of the important projects in the CIP. One of the CIP improvement projects the Director discussed involves Memorial Park, i.e., “Memorial Park-Phase II.” This project included renovation of the north side of Memorial Park, infrastructure upgrades, landscaping, and repairs to park equipment. Respondent voted in favor of the CIP.

On May 16, 2005 the Council, unanimously voted to select John Cahalan, a landscape architect, to provide preliminary designs for projects outlined in the CIP. The Council, including Respondent, voted unanimously to authorize the City Administrator to enter into a contract with Mr. Cahalan, not to exceed \$79,000, for providing the design services.

Mr. Cahalan created design options, including the estimated cost of completion, for each

³ The *Thorner* opinion was codified in regulation 18706 to provide that a material financial effect on an economic interest is reasonably foreseeable, within the meaning of section 87103, if it is substantially likely that one or more of the materiality standards will be met as a result of the governmental decision.

park improvement project. On October 17, 2005 the Council, including Respondent, reviewed Mr. Cahalan's design alternatives and selected, by consensus, specific designs that would govern the park project improvements. In regards to Memorial Park, the Council selected nine improvements at a total estimated cost of \$1,208,426.

Since October 17, 2005, Respondent has recused himself from all Council decisions related to Memorial Park.

As set forth below, Respondent Good made or participated in two governmental decisions involving the Good property and therefore violated section 87100 of the Act.

COUNTS 1-2

MAKING A GOVERNMENTAL DECISION IN WHICH THE OFFICIAL HAS A FINANCIAL INTEREST

1. Respondent Was a Public Official as Defined by the Act

As a member of the City Council on November 1, 2004 and October 17, 2005, Respondent was a public official as defined in section 82048, and was therefore subject to the prohibition against conflicts of interests.

2. Respondent Made a Governmental Decision

At the November 1, 2004 City Council meeting, Respondent voted to approve the CIP, which included improvement proposals to Memorial Park. During the October 17, 2005 City Council meeting, the Council, with Respondent participating, acted by consensus to approve specific designs for improvements to Memorial Park. Consequently, on both dates, Respondent made two governmental decisions for purposes of regulation 18702.1 subdivision (a).

3. Respondent Had an Economic Interest in Real Property

At the time of the governmental decisions, Respondent and his wife owned their personal residence. As the residence is worth \$2000 or more, Respondent had an economic interest in his home for the purposes of section 87103, subdivision (b).

4. Respondent's Economic Interest Was Directly Involved in the Decision

Respondent's home is within 500 feet of Memorial Park. By making governmental decisions on November 1, 2004 and October 17, 2005 that related to improvements to Memorial Park, Respondent's economic interest in real property was directly involved in the decisions for the purpose of Regulation 18704.2(a)(1).

5. Applicable Materiality Standard

Because Respondent's home was directly involved in his governmental decisions, and his interest in his home was worth \$2000 or more at the time of the decisions, any reasonably foreseeable financial effect of the decisions is presumed to be material and constitutes the basis for a conflict of interest. (Regulation 18705.2(a)(1))

6. It Was Reasonably Foreseeable That the Applicable Materiality Standard Would Be Met

Respondent's governmental decisions on November 1, 2004 and October 17, 2005 concerned improvements and renovations specific to Memorial Park (e.g., improvements to the park's walkways, ball fields, and picnic areas), at significant cost to the city. Therefore, it was reasonably foreseeable at the time the decisions were made that Respondent's decisions to approve the improvements and renovations to Memorial Park would have a financial effect to his personal residence which is located across the street from Memorial Park.

By making two governmental decisions in which he had a financial interest, Respondent violated section 87100 of the Act.

Conclusion

This matter consists of two counts of violating the Act and carries a maximum administrative penalty of \$5,000 per violation for a total of \$10,000.

In this matter, Respondent participated in two Council decisions that affected his financial interest in real property. As Respondent's real property interest was across the street from Memorial Park, the conflict of interest in participating in the matters was obvious. Historically, conflict-of-interest violations have been viewed as serious violations of the Act.

Respondent has been on the Council for a total of eleven years. His experience in public office should have alerted him to his conflict of interest in this matter. Also, the Council's decisions took place nearly a year from each other; plenty of time for him to seek advice or otherwise determine that his position on the Council precluded him from deciding on improvements to a Park that was neighboring his personal residence.

In mitigation, he recused himself from voting on further improvements to Memorial Park after November 7, 2005.

This matter consists of two counts, which carry a maximum possible penalty of \$10,000. The facts of this case justify the imposition of a total administrative penalty of \$5,000.